



payable “out of, and not in addition to, the amount of such past-due benefits.” *Id.* Further, while attorney’s fees may be awarded under both the EAJA and section 406(b), the Social Security Act requires that the attorney refund to the claimant the smaller fee. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002); *see also Atwood v. Berryhill*, No. 5:16-CV-00215-MR, 2019 WL 1558699, at \*1 (W.D.N.C. Apr. 10, 2019).

Section 406(b) “does not displace contingent-fee agreements as the primary means by which fees are set for successfully representing Social Security benefits claimants in court;” instead, the Court must determine whether the agreed upon fee is reasonable. *Gisbrecht*, 535 U.S. at 807, 809. The Fourth Circuit deemed the following factors relevant to a district court’s reasonableness inquiry: “the overall complexity of the case, the lawyering skills necessary to handle it effectively, the risks involved, and the significance of the result achieved in district court.” *Mudd v. Barnhart*, 418 F.3d 424, 428 (4th Cir. 2005).

Here, Plaintiff entered into an agreement with counsel that allowed for a fee of up to 25% of the past-due benefits awarded to Plaintiff and her family in the event the case was won. (Doc. No. 20-3). It appears that Plaintiff’s counsel secured an award for Plaintiff in excess of \$70,000.00 in past-due benefits. (Doc. No. 20-1 at 3). Considering the factors above, the Court concludes that the attorney’s fees sought by counsel are reasonable.

**IT IS, THEREFORE, ORDERED** that that Plaintiff’s Motion for Attorney’s Fees, (Doc. No. 20), is **GRANTED**. Plaintiff’s counsel is awarded the sum of \$10,944.50. This amount shall be paid out of Plaintiff’s past-due benefits in

accordance with agency policy and sent to Plaintiff's counsel's office. Upon receipt of the 406(b) fee, Plaintiff's counsel shall pay to Plaintiff the sum of \$5,000.00, the smaller fee received under the EAJA.

**IT IS SO ORDERED.**

Signed: August 14, 2024

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

